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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|---------------------|
| 10 007,326 | 12 05 2001 | Jack R Kelly | COAD-004 01US | 2028 |
| 234;9 | 7500 | 06 23 2003 | | |
| COOLEY GODWARD, LLP 3000 EL CAMINO REAL 5 PALO ALTO SQUARE PALO ALTO, CA 94306 | | | EXAMINER | THOMPSON, TIMOTHY J |
| | | | ART UNIT | PAPER NUMBER |
| | | | 2873 | |

DATE MAILED: 06 23 2003

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | |
|------------------------------|--------------------------------|------------------|
| Office Action Summary | Application No. | Applicant(s) |
| | 10/007,326 | KELLY ET AL. |
| | Examiner Timothy J Thompson | Art Unit 2873 |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on _____.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-36 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1,26 and 30-33 is/are rejected.
- 7) Claim(s) 2-25,27-29 and 34-36 is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 30 April 2002 is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s) _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>5,7,8</u> | 6) <input type="checkbox"/> Other |

DETAILED ACTION

Double Patenting

Double Patenting Claim 1 of this application conflict with claim 1 of Application No. 10/150,206. 37 CFR 1.78(b) provides that when two or more applications filed by the same applicant contain conflicting claims, elimination of such claims from all but one application may be required in the absence of good and sufficient reason for their retention during pendency in more than one application. Applicant is required to either cancel the conflicting claims from all but one application or maintain a clear line of demarcation between the applications. See MPEP § 822.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 26, 30-33 are rejected under 35 U.S.C. 102(b) as being anticipated by Liang(U.S. Patent No. 6,307,667).

Regarding claim 26, Laing discloses dynamically altering the polarization state of a polarized optical beam to form a polarization altered optical beam, wherein the polarization altered optical beam includes elliptical polarization(col 4, lines 27-45) and altering the transmitted amplitude of the polarization altered optical beam as a function

of wavelength thereby producing an output beam with transmitted amplitude adjusted as a function of wavelength(col 5, lines 3-20).

Regarding claims 30-33, Laing does not disclose the optical beam having wavelengths between 1525-1565nm, 1485-1520 nm, 1570-1615nm, or 1540nm or less. However it would have been obvious to one having ordinary skill in the art at the time the invention was made to use wavelengths of between 1525-1565nm, 1485-1520 nm, 1570-1615nm, or 1540nm or less, since it has been held that where the general conditions of the claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

Allowable Subject Matter

Claims 2-25, 27-29, 34-36 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Regarding claims 27-29 and 34-36 the important features are; polarization altered optical beam in a substantially linear manner on a logarithmic scale or a selected profile; process an optical beam with amplitude varying monotonically with wavelength; an initial operation of separating an input optical beam into orthogonally polarized beams. Regarding claims 2-25 the important features are; the transmitted amplitude of said polarization-altered optical beam in a substantially linear manner on a logarithmic scale, or the transmitted amplitude of said polarization-altered optical beam in accordance with a selected profile;

or at least one wave plate is positioned before said at least one variable optical element; or the variable optical element dynamically alters the polarization state of said polarized optical beam so as to smoothly and continuously alter the slope profile of said polarized optical beam between different states ; or the variable optical element is a liquid crystal; or the variable optical element is an electro-optic birefringent element; or the variable optical element is an acousto-optic variable element; or the variable optical element is a birefringent crystal wedge; or the wave plate has multiple orders; or a set of wave plates of predetermined orders and orientations; or the wave plate is at an orientation of between approximately 35 and 55 degrees with respect to said polarized optical beam; or at least one wave plate has an order of retardation greater than one; or a polarization analyzer is a birefringent crystal; or the specific wavelengths of the optical beam; or an optical beam with amplitude varying monotonically with wavelength; or a polarizer to process an optical beam to produce said polarized optical beam, said polarized optical beam including orthogonally polarized beams; or an fiber optic transmission line; or in combination with an optical amplifier.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Timothy J. Thompson whose telephone number is (703) 305-0881. If the examiner can not be reached his supervisor, Georgia Epps, can be reached on (703) 308-4883.

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T.J.T.

6/12/03

Jim Gray